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April 23, 2020

VIA ECFHonorable Margo K. Brodie
225 Cadman Plaza East
Brooklyn, New York 11201Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

Since our April 17, 2020 Telephone Status Conference with the Court, I have spoken with counsel for Federal Defenders, Inc., along with their client representatives and have had a similar separate conversation with counsel for the government and representatives of the Metropolitan Detention Center ("MDC") and

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Metropolitan Correctional Center (“MCC”).¹ I have also spoken with the Acting Warden and Associate Wardens of the MCC.

This week, my conversations with the Federal Defenders and the Government have focused on the following topics:

1. The execution of the new protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.
2. The backlog of unfacilitated legal calls at both institutions for the period between March 13, 2020 and April 20, 2020.
3. Privilege concerns relating to legal telephone calls at both facilities.
4. Efforts to improve access to videoconferencing equipment at both institutions.
5. Protocols for ensuring inmates receive telephone calls if and when they are placed on isolation units due to coronavirus exposure.

My conversations with the Acting Warden and Associate Wardens of the MCC have focused on the following topics:

1. Issues concerning non-court telephone calls made pursuant to the protocol, including issues of the timing of the calls, length of calls, and privacy.
2. The status of backlogged telephone call requests.

Once again, my discussions with the parties have been productive. Each side understands the important issues at stake in this litigation and are working in good faith and under difficult circumstances to address these issues.

II. Telephonic Contact

The Court Protocol for Attorney Calls and Teleconference Hearings went into effect this week. Pursuant to the Protocol, attorney client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC. Attorney client calls pursuant to the protocol began on Monday, April 20. There was some confusion that initial day, with correction officers beginning several of the calls during the morning hours instead of the afternoon hours and some calls scheduled for Tuesday being placed on Monday. The Protocol provides that non-court calls are to be “facilitated” and “prioritize[d]” by Federal Defenders, and that Federal Defenders “will provide a schedule of calls to the BOP for each unit for each

¹ With Federal Defenders, Inc.: April 23, 2020; with MCC and MDC: April 21, 2020; with MCC: April 23, 2020.

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afternoon two days in advance.” Protocol at ¶ 13. The Protocol then injects confusion into this issue, as it provides in the same paragraph that BOP may use the morning hours, if needed, to ensure that all calls are made. Such calls must, however, be on notice to counsel. *Id.* The absence of notice left counsel in several instances unable to participate in the call. These calls were then rescheduled. Both institutions have reiterated to staff that counsel calls should take place during the afternoons.

Other concerns that arose on Monday involved several calls being limited to 15 minutes rather than the allotted 30 minutes and privacy issues wherein staff either remained in the office with the inmate or placed calls with cellmates present. Federal Defenders relayed these concerns immediately to both the institutions and to me so that action could be taken. While additional training saw improvement in these issues there were still sporadic instances throughout the week of calls occurring during the morning hours without notice and corrections officers not providing the requisite privacy for legal calls. Several calls were still being limited to 15 minutes rather than the required 30 minutes. The institutions have committed to reiterating the importance of these issues with staff.

Both the MDC and MCC raised these issues with the Warden, Associate Wardens and Unit Managers. The MDC has reiterated to staff their obligation to provide the scheduled 30 minutes per call (unless the parties end earlier) and that privacy must be provided. In addition, I spoke directly with the MCC Acting Warden and the two Associate Wardens with responsibility for access issues and raised these concerns. MCC management has provided training on these issues both earlier this week and this morning. There will also be direct communication from the Associate Warden to staff on these issues. The specific corrections officers involved in these incidents will be spoken with directly.

BOP is keeping logs of the scheduled calls and completion data as required by the Protocol. In addition to providing the logs to the Court and Federal Defenders as set forth in the Protocol they will also be provided to me.

According to the information I have received from the MCC this week, there were 133 calls requested pursuant to the court protocol since the last status conference. Thirty-eight calls were completed on Monday, April 20; thirty-two calls were completed on Tuesday, April 21; and forty-four calls were completed on Wednesday, April 22. Nine calls were attempted but not completed. There were ten calls for which we do not have data at the time of filing.

The MDC’s logs indicate that there were 145 call requests since the last status conference. Many but not all were scheduled pursuant to the new protocol. Forty-one were completed on Monday, April 20; fifty were completed on Tuesday, April 21; thirty-five were completed on Wednesday, April, 22. The MDC completed two calls over the weekend. There were eleven calls attempted but not completed and three were cancelled or rescheduled at the attorney’s request. There were three calls for which we do not have data at the time of filing.

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III. Backlog of Telephone Requests

This Court directed me to ascertain the status of outstanding requests for telephonic access, which we have been referring to as the backlog of telephone requests.

Both institutions have assigned staff to review the outstanding requests to determine their status. The MDC has begun actively reaching out to attorneys with outstanding requests to determine if calls are still needed. To date, the majority of counsel contacted no longer require a call. The MDC will work to schedule outstanding calls, to the extent they are not covered by the Federal Defenders schedule, in the morning hours.

IV. Video Conferencing

The Protocol provides for the use of videoconferencing equipment for afternoon non-court calls as needed. Last week this Court, along with Judge Nathan, asked me to ascertain the status of that capability. I have spoken with the parties and communicated with John McEnany, the Associate U.S. Attorney in the Southern District of New York, who has been working on this issue. Mr. McEnany has advised me that both institutions have access to a web based platform to facilitate attorney client videoconferences. Bandwidth concerns may limit the volume of videoconferences that can be scheduled. Those issues are still being explored with the institutions and their technical staff.

The MCC did not report any video conferences scheduled for this week.

The MDC reports that there were nine videoconferences scheduled for this week, pursuant to the preexisting videoconferencing system. Three were completed earlier this week, while two were scheduled for today. An additional three did not go forward due to attorney cancellations. According to MDC records, the ninth videoconference did not go forward due to an administrative error at the facility.

V. Inmates in Isolation

I continue to closely monitor the issue of whether inmates isolated due to coronavirus exposure are being afforded access to counsel at both institutions. I discussed this issue with the MCC Acting Warden during our phone call this week. The Acting Warden assured me that isolated inmates will receive their legal phone calls.

Nevertheless, I note that in one of MDC's call logs this week, an inmate whose attorney requested a legal call on April 20, 2020 had not received a call by April 22, 2020. In the column documenting unsuccessful "attempts" to place the call, MDC noted that the inmate was in "isolation." I followed up with MDC officials for an explanation of this notation. The MDC staff assured me that they would follow-up on why this particular inmate had not yet received their legal call. They also assured me that this call would be provided on April 24, 2020.

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In addition, Federal Defenders raised an issue concerning two inmates at the MCC who were in isolation who did not receive calls scheduled for Monday April 20. MCC has informed me that neither inmate was denied a legal call because they were in isolation. It is my understanding that one of the inmates actually did receive their requested legal call, while the other inmate's call is being rescheduled. Once again, I will continue to closely monitor this issue.

Although not specifically an isolation issue, Federal Defenders has informed me that the women's unit at MDC was apparently placed in a "lockdown" status, similar to that utilized on the men's units. This apparently occurred this week after COVID-19 concerns were raised by some of the women. Because the women's unit is structured as an open dorm like unit, women are restricted to the area of their bunks. I have asked the institution to look into this issue and ensure that access to counsel is maintained.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink
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